

## Message Text

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PAGE 01 STATE 052726

56

ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 EB-07 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05 LAB-04

NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04

ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01

XMB-02 /092 R

DRAFTED BY L/NEA:JAROHWER:DSC

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NEA/ARN:MMAUGHAN

EB/OT/GCP:RBANQUE

L/EB:CROH

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R 040315Z MAR 76

FM SECSTATE WASHDC

TO AMEMBASSY KUWAIT

C O N F I D E N T I A L STATE 052726

E.O. 11652: GDS

TAGS: ETRD, IZ

SUBJECT: DISCRIMINATORY CUSTOMS DUTY ON AMERICAN CARS

KUWAIT POUCH BAGHDAD FOR ACTION

REF: BAGHDAD 210

1. ALTHOUGH REFTEL'S INFORMATION IS INSUFFICIENT FOR US TO JUDGE, THE 300 PER CENT CUSTOMS DUTY MAY BE A VIOLATION OF THE U.S.-IRAQ COMMERCE AND NAVIGATION TREATY OF DECEMBER 3, 1938 (10 SHAWAAL 1357; ENGLISH AND ARABIC TEXTS ARE EQUALLY AUTHENTIC). THE RELEVANT PARTS OF ARTICLE I OF THAT TREATY PROVIDE: QUOTE IN RESPECT OF IMPORT AND  
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PAGE 02 STATE 052726

EXPORT DUTIES, ALL OTHER CHARGES IMPOSED ON OR IN CONNEC-

TION WITH IMPORTATION OR EXPORTATION, AND THE METHOD OF LEVYING SUCH DUTIES AND CHARGES, AS WELL AS IN RESPECT OF TRANSIT, WAREHOUSING AND CUSTOMS FORMALITIES, AND THE TREATMENT OF COMMERCIAL TRAVELERS' SAMPLES, THE UNITED STATES OF AMERICA WILL ACCORD TO IRAQ AND IRAQ WILL ACCORD TO THE UNITED STATES OF AMERICA, ITS TERRITORIES AND POSSESSIONS, UNCONDITIONAL MOST-FAVORED-NATION TREATMENT. (THEREFORE,)...NO HIGHER OR OTHER DUTIES SHALL BE IMPOSED ON THE IMPORTATION INTO OR THE DISPOSITION IN IRAQ OF ANY ARTICLES THE GROWTH, PRODUCE OR MANUFACTURE OF THE UNITED

STATES OF AMERICA, ITS TERRITORIES OR POSSESSIONS, THAN ARE OR SHALL BE PAYABLE ON LIKE ARTICLES THE GROWTH, PRODUCE OR MANUFACTURE OF ANY OTHER FOREIGN COUNTRY.... ANY ADVANTAGE, OF WHATSOEVER KIND, WHICH EITHER HIGH CONTRACTING PARTY MAY EXTEND TO ANY ARTICLE, THE GROWTH, PRODUCE OR MANUFACTURE OF ANY OTHER FOREIGN COUNTRY SHALL SIMULTANEOUSLY AND UNCONDITIONALLY, WITHOUT REQUEST AND WITHOUT COMPENSATION, BE EXTENDED TO THE LIKE ARTICLE, THE GROWTH, PRODUCE OR MANUFACTURE OF THE OTHER HIGH CONTRACTING PARTY. END QUOTE. THIS IS STANDARD MOST-FAVORED-NATION TREATY LANGUAGE. THIS PROVISION DOES NOT PREVENT IRAQ FROM IMPOSING DIFFERENT RATES OF DUTY BASED ON SOME NEUTRAL, REASONABLE CRITERIA BUT A HIGHER DUTY BASED ON U.S. ORIGIN, OR ON CRITERIA DRAWN UP SIMPLY TO HAVE THAT DISCRIMINATORY EFFECT, WOULD VIOLATE THE MFN PROVISION.

2. USINT SHOULD INFORMALLY BRING TO GOI ATTENTION THIS APPARENT VIOLATION OF A TREATY OBLIGATION AND ASK FOR MORE INFORMATION ABOUT THE REASONS FOR THE DIFFERING DUTIES. IF INQUIRIES CONFIRM THERE IS A VIOLATION WE ARE PREPARED TO MAKE A FORMAL PROTEST TO GOI.

3. FYI; IRAQ IS NOT A MEMBER OF GATT, SO THERE APPEAR TO BE NO OTHER TREATY OBLIGATIONS THE DIFFERING DUTIES MIGHT VIOLATE. THE COMMERCE AND NAVIGATION TREATY HAS NO PROVISION FOR DISPUTE SETTLEMENT. ASSUMING THIS IS A VIOLATION AND THAT IT CONTINUES EVEN AFTER FORMAL REPRESENTATIONS, WE THEN HAVE THE POWER (1) TO TERMINATE

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PAGE 03 STATE 052726

THE COMMERCE AND NAVIGATION TREATY ON ONE YEAR'S NOTICE (OR, UNDER ARTICLE V, CONCEIVABLY 30 DAYS' NOTICE, IF AUTOMOBILES ARE CONSIDERED "CHIEF EXPORTS" OF U.S. TO IRAQ); AND (2) UNDER SECTION 30L OF THE TRADE ACT OF 1974, TO IMPOSE DUTIES OR OTHER IMPORT RESTRICTIONS ON IRAQI PRODUCTS, OR FEES ON IRAQI SERVICES, IN RETALIATION FOR ITS UNJUSTIFIABLE OR UNREASONABLE DISCRIMINATORY ACTS. BOTH OF THESE ARE EXTREME REMEDIES WHICH SHOULD NOT BE

MENTIONED TO GOI UNTIL FURTHER NOTICE. END FYI. KISSINGER

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## Message Attributes

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**TAGS:** ETRD, IZ, US  
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